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May 22, 1996

In Re: Application of Liberty Cable Co., Inc

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Lawyer's Notes

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E R R A T A S H E E T

To the deposition of Michael Lehmkuhl.

The deponent having a right to make any changes deemed necessary, hereby makes the following changes into the deposition and states the reason for each change accordingly.

Page 26, Lines 6 -7, Pages 28-29, Lines 21 - 22, 1-2.

Change: To facilitate the preparation of routine applications, for a time, **pre-**signed forms were used so that the applications could be filed as soon as possible after the frequency coordination process was completed.

Reason for Change: At the time, I did not understand the point of Mr. Weber's question when he asked whether I did anything to speed-up "the application process".

Page 70, Lines 20 - 21, Page 74, Lines 3 - 5.

Change: I incorrectly stated that filing pre-signed forms only occurred in a few instances and that it was not a routine practice. After checking our records with respect to what I know personally, I have determined that it was common before I started working on the account up to approximately late Spring 1995 when the practice was discontinued.

Reason for Change: This has not been the practice for over a year now which caused me to fail to focus on the time period the practice was in use.

Page 81, Line 20.

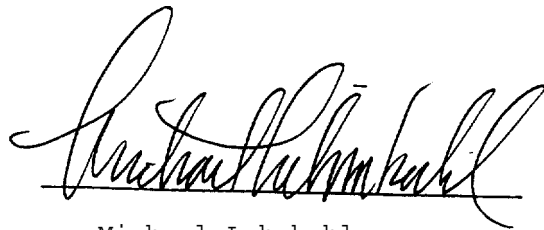
Change: No. Mr. Nourain did not send it back to me by facsimile. The difference in appearance is accounted for by the fact that it was sent via facsimile to Mr. Nourain from our office, which he then signed and returned to me via overnight mail.

Reason for Change: At the time, I misunderstood Mr. Beckner's restatement of the facts in his question.


DEPONENT'S SIGNATURE

CERTIFICATE OF DEPONENT

I have read the foregoing ~~pages~~ pages which contain
the correct transcript of the answers made by me to the
questions therein recorded.

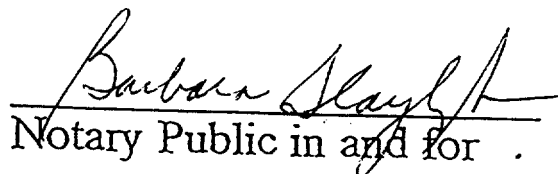


Michael Lehmkuhl

* * *

Subscribed and sworn before me this .

17th day of July, 19 96.


Notary Public in and for .

My commission expires

July 21, 1996.



RECYCLED

ED11

ALL-STATE® LEGAL 880-222-0510

In The Matter Of:

In re: Application of Liberty Cable Co. Inc.

Michael Lehmkuhl
Vol. 2, August 7, 1996

Miller Reporting Company, Inc.
507 C Street, NE.
Washington, DC 20002
(202) 546-6666 FAX: (202) 546-1502

original File 0807lebm.asc, 102 Pages
Min-U-Script® File ID: 106045 7755

Word Index included with this Min-U-Script®

Federal Communications Commission

File # 96-41 Subfile # 6
by Liberty/Bureau

Disposition

Identified ☒

Received ☒

Rejected ☐

Reporter 4

6-8-97

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
in re: Application of : WT Docket No.
: 96-41

Liberty Cable Co. Inc.

CONFIDENTIAL

Washington, D.C.

Wednesday, August 7, 1996

The continued deposition of MICHAEL

LEHMKUHL, called for examination by counsel for
the Federal Communications Commission in the
above-entitled matter, pursuant to Notice, in the
offices of the Federal Communications Commission,
2925 M Street, N.W., Washington, D.C., convened at
9:30 a.m., before Paula J. Eastes, a notary public
in and for the District of Columbia, when were
present on behalf of the parties:

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Federal Communications Commission

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By Mr. Kirkland PAGE 135

EXHIBITS

LEHMKUHL EXHIBITS FOR IDENTIFICATION

Exhibit No. 3 93

Exhibit No. 4 97

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PROCEEDINGS

Whereupon,

[1] MICHAEL LEHMKUHL
[2]
[3] was called for examination by counsel for the Federal
[4] Communications Commission and, having been previously
[5] duly sworn by the notary public, was examined-and
[6] testified further follows:

EXAMINATION BY COUNSEL FOR THE FEDERAL
COMMUNICATIONS COMMISSION
BY MR. WEBER:

[11] Q: Good morning, Mr. Lehmkuhl. As you know, I
[12] am Joseph Weber with the Wireless Telecommunications
[13] Bureau.

[14] We are going to go ahead and treat this as a
[15] continuation of your previous deposition, so I will
[16] remind you that you are still under oath.

[17] A: Okay.

[18] Q: To start off with, I would like to show you a
[19] copy of what has previously been marked as Price
[20] Exhibit 17 and ask you to thumb through this and tell
[21] me if you recognize this document?

[22] A: (Witness perusing document.)

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[1] Yes. I do.

[2] Q: Did you prepare this document?

[3] A: Yes. I did.

[4] Q: What is this document?

[5] A: This document is an inventory of Liberty's
[6] 18 GHz licenses as of February 24th of 1995.

[7] Q: Did you send this document to Peter Price and
[8] Mr. Nourain?

[9] A: Yes. I did.

[10] Q: And also Mr. Courtney?

[11] A: That is correct.

[12] Q: What is the 1808 correspondence file?

[13] A: That is Pepper & Corazzini's internal file.

[14] That is the client matter file with the correspondence
[15] file for Liberty Cable.

[16] Q: 1808 is the client number?

[17] A: The client number.

[18] Q: And the carbon copy at the bottom is RFC,
[19] Mr. Corazzini?

[20] A: That is correct.

[21] Q: And HJB is Mr. Barr?

[22] A: That is correct.

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[1] Q: Why did you prepare this document?

[2] A: I prepared this document to give Liberty
[3] Cable an idea of what was pending and what was not at
[4] the FCC. Previously these inventories had been
[5] prepared for Liberty and I was continuing that. And I
[6] believe also my reason for doing so is stated in the
[7] memorandum.

[8] Q: Were you instructed by anybody to prepare
[9] this document?

[10] A: Not specifically. No.

[11] Q: What exactly do you mean by not specifically?

[12] A: Well, we had prepared a number of these
[13] awhile back, not me personally. But I believe back in
[14] 92 Mr. Price had asked that these inventories be
[15] prepared.

[16] Q: In 92 Mr. Price did?

[17] A: I believe so. Yes.

[18] There- was a memorandum that had asked us to
[19] prepare these, to keep them updated, and just as a
[20] general matter this was done to keep the client
[21] informed.

[22] Q: Can you tell me what you had to do in order

<p style="text-align: right;">Page 91</p> <p>[1] to prepare this document?</p> <p>[2] A: In order to prepare this document I had to</p> <p>[3] look through all of the available public records and</p> <p>[4] licenses to determine the status of the paths of the</p> <p>[5] applications and of the licenses.</p> <p>[6] Q: I would like you to turn to the page which at</p> <p>[7] the bottom is marked 16155.</p> <p>[8] You will notice in the right-hand column</p> <p>[9] there is handwriting of a letter G going down in the</p> <p>[10] column.</p> <p>[11] A: That is correct.</p> <p>[12] Q: Is that your handwriting?</p> <p>[13] A: That is.</p> <p>[14] Q: And then if you thumb through on a few</p> <p>[15] following pages, there is also more handwriting and</p> <p>[16] occasionally there is also the letter P.</p> <p>[17] Is that your handwriting throughout?</p> <p>[18] A: That is.</p> <p>[19] MR. SPITZER: Do you just want, as a matter</p> <p>[20] of clarity, to indicate the Bates number pages, in the</p> <p>[21] eventuality there is more than one handwriting?</p> <p>[22] BY MR. WEBER:</p>	<p style="text-align: right;">Page 94</p> <p>[1] I mean, this was a long-standing policy with</p> <p>[2] our firm that we would update them on a periodic</p> <p>[3] basis. It wasn't necessarily regular.</p> <p>[4] Q: Who told you that this was a policy of the</p> <p>[5] firm?</p> <p>[6] A: That would be Jennifer Richter, who I took</p> <p>[7] this matter over from.</p> <p>[8] Q: Did you have any discussions regarding the</p> <p>[9] inventories with Mr. Barr?</p> <p>[10] A: If I did, it was primarily -</p> <p>[11] MR. SPITZER: About the policy or about the</p> <p>[12] memorandum?</p> <p>[13] MR. WEBER: About the policy of preparing</p> <p>[14] inventories.</p> <p>[15] THE WITNESS: Yes.</p> <p>[16] BY MR. WEBER:</p> <p>[17] Q: And did he tell you it was the policy of the</p> <p>[18] firm to prepare such inventories?</p> <p>[19] A: I don't recall.</p> <p>[20] Q: In the second paragraph in the text of your</p> <p>[21] memo the final sentence concludes that Liberty is no</p> <p>[22] longer operating under any STAs.</p>
<p style="text-align: right;">Page 92</p> <p>[1] Q: Look now at page 16158, the G and P.</p> <p>[2] Is that your handwriting?</p> <p>[3] A: Yes.</p> <p>[4] Q: And if you would just look through now and</p> <p>[5] see if you can tell me if there is any page with</p> <p>[6] handwriting that is not yours?</p> <p>[7] A: (Witness perusing document.)</p> <p>[8] No. It appears not.</p> <p>[9] MR. SPITZER: I wonder if it wouldn't be</p> <p>[10] smart to mark this copy of the exhibit just because it</p> <p>[11] is possible there would be other versions, other copies</p> <p>[12] of this, where there had been handwriting added, since</p> <p>[13] the issue is what handwriting is on this copy.</p> <p>[14] MR. WEBER: That would be fine.</p> <p>[15] MR. SPITZER: I don't think it's an issue,</p> <p>[16] but in case there is another copy of this that was</p> <p>[17] floating somewhere and somebody else had written on it,</p> <p>[18] it could be copied, as in duplicated, and then it would</p> <p>[19] be unclear whether this witness was testifying about</p> <p>[20] that handwriting.</p> <p>[21] MR. WEBER: Well, there is a Price 17 that is</p> <p>[22] in the official copy and this is what he is looking at.</p>	<p style="text-align: right;">Page 95</p> <p>[1] At the time was that correct?</p> <p>[2] A: If it's there, I would assume that it is.</p> <p>[3] Q: Can you recall if you had any discussions</p> <p>[4] with Mr. Nourain regarding STAs in this time frame?</p> <p>[5] A: Yes.</p> <p>[6] Q: To your knowledge, was Mr. Nourain aware in</p> <p>[7] this time frame, February of 95, that Liberty was not</p> <p>[8] operating under any STAs?</p> <p>[9] A: I don't know.</p> <p>[10] Q: In this same time frame again had Mr. Nourain</p> <p>[11] instructed you to file any STAs for any applications?</p> <p>[12] MR. SPITZER: You are again referring to</p> <p>[13] February 95 as the time frame?</p> <p>[14] MR. WEBER: Yes.</p> <p>[15] THE WITNESS: I don't recall specifically.</p> <p>[16] BY MR. WEBER:</p> <p>[17] Q: Can you tell me approximately how long it</p> <p>[18] took you to prepare this memorandum and obviously the</p> <p>[19] attached inventory?</p> <p>[20] MR. SPITZER: The totality of Price 17.</p> <p>[21] MR. WEBER: Or Lehmkuhl 13.</p> <p>[22] THE WITNESS: It took me, I don't know, about</p>
<p style="text-align: right;">Page 93</p> <p>[1] We can mark this as Lehmkuhl 3 if you are</p> <p>[2] concerned.</p> <p>[3] MR. SPITZER: We might as well. I am not</p> <p>[4] concerned, but I just think in terms of clarity.</p> <p>[5] MR. WEBER: We will go ahead and have the</p> <p>[6] reporter mark this as Lehmkuhl 13.</p> <p>[7] (Lehmkuhl Exhibit No. 3</p> <p>[8] was marked for identification.)</p> <p>[9] BY MR. WEBER:</p> <p>[10] Q: Can you tell me if you had any follow-up</p> <p>[11] discussions with Mr. Price regarding this memo?</p> <p>[12] A: Not that I recall.</p> <p>[13] Q: Did you have any follow-up discussions with</p> <p>[14] Mr. Nourain regarding this memo?</p> <p>[15] A: Not that I recall.</p> <p>[16] Q: You stated earlier that you believed in 1992</p> <p>[17] Mr. Price had requested such inventories to be</p> <p>[18] prepared.</p> <p>[19] Where did you get this knowledge from?</p> <p>[20] A: I got this knowledge from looking through</p> <p>[21] some of the prior memorandums and the correspondence</p> <p>[22] file. It may have been 92. It may have been '91.</p>	<p style="text-align: right;">Page 96</p> <p>[1] four or five hours over a few days. Possibly even</p> <p>[2] longer.</p> <p>[3] BY MR. WEBER:</p> <p>[4] Q: Now, on the inventory, turn to the first page</p> <p>[5] where there is separate path listings, 16145.</p> <p>[6] The 99 Battery Place up at the top, is that a</p> <p>[7] transmitter location, to your knowledge?</p> <p>[8] A: That is correct.</p> <p>[9] Q: Then the three path names are the three</p> <p>[10] receiver locations that proceed from that path?</p> <p>[11] A: That is correct.</p> <p>[12] Q: Was this page prepared by just a computer</p> <p>[13] printout or did you have to input each individual path</p> <p>[14] name from that receiver location?</p> <p>[15] A: I'm not sure what you mean.</p> <p>[16] Q: In order to prepare this page did you have to</p> <p>[17] yourself type in each individual location or is there a</p> <p>[18] way that your computer prints it out automatically?</p> <p>[19] MR. SPITZER: Do you mean did he have to type</p> <p>[20] it in immediately prior to preparing this inventory -</p> <p>[21] MR. WEBER: Yes.</p> <p>[22] MR. SPITZER: - or was this preexisting</p>

<p style="text-align: right;">Page 97 I</p> <p>[1] information in the computer?</p> <p>[2] MR. WEBER: Let's ask it that way.</p> <p style="text-align: center;">BY MR. WEBER:</p> <p>[4] Q: Was this preexisting information in the computer?</p> <p>[5] A: No. I don't believe so.</p> <p>[7] Q: So when you prepared the inventory, at that time was when you typed in each individual path name?</p> <p>[9] A: I believe so. I'm not certain that this was the first inventory I prepared, but if it is, yes, that would be correct.</p> <p>[12] Q: And then subsequent pages here at the top when there is a listing of an address, say the next page, 16146, 30 Waterside, again that is a transmitter location?</p> <p>[16] A: That is correct.</p> <p>[17] Q: And 16 West 16th Street is a receiver?</p> <p>[18] A: Yes.</p> <p>[19] MR. WEBER: I would like to have this marked as Lehmkuhl14.</p> <p>[21] (Lehmkuhl Exhibit No. 4</p> <p>[22] was marked for identification.)</p>	<p style="text-align: right;">Page 100</p> <p>[1] second page, is this referring to two separate tasks you did on that date, where it says inventory and prepare the applications?</p> <p>[4] A: Yes.</p> <p>[5] Q: Can you recall now an approximate time division between the two, how much time was spent on one of the items and how much time was spent on the other?</p> <p>[9] A: No. I can't recall. I would say that I probably spent a little less time on the inventory.</p> <p>[11] Q: I would like you to turn to the first page of Lehmkuhl14 again. The entry for 02/21/95, the very last statement there is, draft memo re grant.</p> <p>[14] Is that referring to Lehmkuhl Exhibit 3, to your knowledge?</p> <p>[16] A: No.</p> <p>[17] Q: What is that referring to?</p> <p>[18] A: I don't recall. I would imagine - well, it's possible that it could be this memorandum. It's not clear and I don't remember.</p> <p>[21] Q: Can you recall to&y if you did any work on Lehmkuhl Exhibit 3 more than a day before it was</p>
<p style="text-align: right;">Page 99</p> <p>[1] MR. WEBER: For the record this is a three page document. The Bates number is 17075 through 17077.</p> <p>[4] THE WITNESS: The numbers on the pages here are missing.</p> <p>[6] MR. SPITZER: It is the xeroxing, I think, unfortunately. We don't dispute the numbers, just the actual original of the exhibit the Bates numbers on the last two pages are essentially not visible.</p> <p>[10] MR. WEBER: I understand.</p> <p style="text-align: center;">BY MR. WEBER:</p> <p>[12] Q: Can you identify this document for me, Mr. Lehmkuhl?</p> <p>[14] A: Yes. This looks like a bill or a pre-bill from Pepper & Corazzini.</p> <p>[16] Q: And from looking at this bill, does it cover the time period during which Lehmkuhl Exhibit 3 was prepared?</p> <p>[19] A: I believe so. I would have to look at prior months. But, yes, it looks reasonable.</p> <p>[21] Q: If you notice, the first date which the billing statement covers is February 3rd, '95; is that</p>	<p style="text-align: right;">Page 101</p> <p>[1] actually sent out?</p> <p>[2] A: Yes.</p> <p>[3] Q: The reason I am asking, the first entry, which is clearly referring to Lehmkuhl Exhibit 3, was the 23rd of February and the memo itself was dated the 24th. I am trying to find out when you spent time on it prior to the 23rd of February.</p> <p>[8] A: Well, that was awhile ago. But, yes, I did spend time on it prior to sending it out.</p> <p>[10] Q: To your knowledge, did anybody at Liberty ever question any of the billing relating to this memorandum?</p> <p>[13] A: No.</p> <p>[14] Q: If there were any questions relating to the billing of this memorandum, would it have been directed to you?</p> <p>[17] A: Possibly. Or I would have known about it.</p> <p>[18] Yes.</p> <p>[19] Q: Did anybody else in your office also spend time in assisting with the preparation of this memorandum?</p> <p>[22] A: Possibly a paralegal.</p>
<p style="text-align: right;">Page 99</p> <p>[1] correct?</p> <p>[2] A: Yes.</p> <p>[3] Q: Can you recall if you spent any time preparing Lehmkuhl Exhibit 3 prior to February 3rd, 1995?</p> <p>[6] A: I don't recall.</p> <p>[7] Q: Turn to the second page of this document. You will notice under an entry 02/23/95 it states: "Inventory; Prepare 7-18 Ghz applications".</p> <p>[10] A: Yes. I see that.</p> <p>[11] Q: Is the inventory referred to here Lehmkuhl Exhibit 3, to your knowledge?</p> <p>[13] A: To my knowledge, yes.</p> <p>[14] Q: And the initials MJL, does that mean that you worked on this project?</p> <p>[16] A: Yes. That is correct.</p> <p>[17] Q: And then under the entry 02/24/95, "prepare and send out 18 GHz inventory," does that mean on or about the 24th of February 95 you sent out Lehmkuhl Exhibit 3?</p> <p>[21] A: Yes. To my knowledge.</p> <p>[22] Q: Back on the 02/23/95 entry, also there on the</p>	<p style="text-align: right;">Page 102</p> <p>[1] Q: You don't recall specifically?</p> <p>[2] A: No.</p> <p>[3] Q: I would like to show you what has been previously marked as Price Exhibit 18. Tell me if you can tell me what this document is.</p> <p>[6] A: It looks like an inventory that was previously sent to Liberty from Jennifer Richter.</p> <p>[8] Q: Is this one of the inventories you referred to previously as being the policy of being prepared?</p> <p>[10] A: Yes.</p> <p>[11] Q: Is there anywhere in that memorandum which indicates which paths have been granted and which ones are still pending?</p> <p>[14] MR. SPITZER: Take a moment to look through it.</p> <p>[16] THE WITNESS: (Witness reading document.) From what I can tell, this is an inventory of paths that have been granted.</p> <p>[19] BY MR. WEBER:</p> <p>[20] Q: Can you recall in that time frame - this memorandum itself is dated January 1996 - whether or not Ms. Richter also prepared any inventory</p>

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(1) of applications that were pending?
 (2) A: I was not at that **firm** at that time. I have
 (3) no knowledge of that.
 (4) Q: But as of now you don't know whether it was
 (5) done?
 (6) MR. SPITZER: In that time frame?
 (7) MR. WEBER: In that time frame.
 (8) MR. SPITZER: January '94?
 (9) MR. WEBER: Yes.
 (10) THE WITNESS: Could you just repeat the
 (11) question again?
 (12) BY MR. WEBER:
 (13) Q: Do you know today whether or not in 1994
 (14) Ms. Richter also prepared an inventory of pending
 (15) applications?
 (16) A: I'm not aware.
 (17) Q: On certain pages, such as 116167, there is
 (18) some handwriting.
 (19) Do you recognize that handwriting?
 (20) A: No. I don't.
 (21) Q: It is not yours?
 (22) A: No.

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(1) Q: To what extent were you able to use the
 (2) previous inventories in order to prepare the inventory
 (3) you prepared in Lehmkuhl Exhibit 3?
 (4) A: Not exclusively, but I did rely on them.
 (5) Yes.
 (6) MR. WEBER: Thank you. I have no further
 (7) questions.
 (8) EXAMINATION BY COUNSEL FOR TIME-WARNER CABLE
 (9) PI OF NEW YORK CITY
 (10) BY MR. BECKNER:
 (11) Q: Mr. Lehmkuhl, my name is Bruce Beckner. I
 (12) think we have met before. I have a few further
 (13) questions about some of these exhibits.
 (14) First, you have Lehmkuhl Exhibit 3, also
 (15) known as Price 17, in front of you. I want to ask you
 (16) a few more questions about that.
 (17) Does this document say whether or not Liberty
 (18) as of the date the document was prepared was operating
 (19) under any STAs?
 (20) A: Well, I'm not **sure**. **There** is the sentence
 (21) there that says consequently Liberty is no longer
 (22) operating under any STAs.

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(1) Q: And you wrote that, did you not?
 (2) A: Yes. I did.
 (3) Q: Tell me what it means.
 (4) MR. SPITZER: I think the sentence speaks for
 (5) itself. Can you elaborate?
 (6) MR. BECKNER: I think I am entitled to ask
 (7) the witness about something he wrote.
 (8) MR. SPITZER: Well, if you understand the
 (9) question, you can answer it.
 (10) It seems to me it is a simple declarative
 (11) sentence. When you say what does it mean, it's like
 (12) saying, the dog is red, what **does** that mean? The dog
 (13) is red.
 (14) I don't understand your question.
 (15) BY MR. BECKNER:
 (16) Q: Can you answer the question, Mr. Lehmkuhl?
 (17) A: It means that Liberty is no longer operating
 (18) under any STAs. If you look at the sentence
 (19) previously, it states that the applications that had
 (20) been pending have finally been granted and therefore
 (21) there was no reason to operate under STA.
 (22) Q: I will re-ask the previous question. That

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(1) is, as of the date you prepared this memorandum, to
 (2) your knowledge; **Liberty had no STAs**; is that correct?
 (3) MR. SPITZER: What do you mean had no STAs?
 (4) MR. BECKNER: Was not operating under any
 (5) STAs.
 (6) MR. SPITZER: That question has been asked
 (7) and answered.
 (8) MR. BECKNER: I don't think it was answered.
 (9) MR. SPITZER: It was answered.
 (10) THE WITNESS: Could you please ask the
 (11) question again?
 (12) BY MR. BECKNER:
 (13) Q: I just want to clarify as of the date of this
 (14) memorandum, to your knowledge, Liberty was not
 (15) operating under any STAs?
 (16) MR. SPITZER: That question has been asked
 (17) and answered. I will instruct him not to answer it
 (18) again.
 (19) MR. BECKNER: Okay. We will note that. We
 (20) will get an answer from the judge.
 (21) MR. SPITZER: You can re-read the transcript.
 (22) MR. BECKNER: The witness has been playing

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(1) games with me on this transcript.
 (2) I simply want to know whether or not this
 (3) document says to anyone who reads it that there are no
 (4) STAs under which Liberty is currently operating. That
 (5) is the first question I asked. He did not give me a
 (6) clear answer and I am entitled to a **clear** answer.
 (7) MR. SPITZER: Mr. Beckner, the witness has
 (8) not been playing games with you or with anybody. I
 (9) resent you saying that. If you had listened earlier in
 (10) the day, you would have heard the question asked and
 (11) answered with tremendous clarity.
 (12) Next question, please, Mr. Beckner.
 (13) BY MR. BECKNER:
 (14) Q: Turn to the next page of Lehmkuhl 13, the one
 (15) that has production number 016140.
 (16) **These are the addresses** of the transmitter
 (17) locations; is that correct?
 (18) A: That is correct.
 (19) Q: With respect to the location that is 30
 (20) Waterside, there is under the **column callsign** the word
 (21) new.
 (22) Can you tell me what that means?

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(1) A: That means that it is a pending application
 (2) and that no **callsign** had been assigned.
 (3) Q: And under the column that says, STA question
 (4) mark, there is the word "no".
 (5) A: That is correct.
 (6) Q: And that means?
 (7) A: That means there wasn't an STA.
 (8) Q: Would that also be true for the location
 (9) identified as 335 Madison? That is, that the **callsign**
 (10) identified as new, does that mean it's a pending
 (11) application?
 (12) A: That is correct.
 (13) Q: And no STA?
 (14) A: That is correct.
 (15) Q: Same question with respect to the location of
 (16) 767 Fifth Avenue with the **callsign** as new. Does that
 (17) mean that there is a pending application?
 (18) A: Yes.
 (19) Q: And no STA?
 (20) A: Yes.
 (21) Q: Now, I take it from your answer to one of
 (22) Mr. Weber's questions that **you** did, in **fact**, consult

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[1] one or more of the previous inventories that Pepper &
[2] **Corazzini** had prepared in the course of your preparing
[3] Lehmkuhl Exhibit 3.
[4] Is that correct?
[5] A: That is correct.
[6] Q: You have been shown Price Exhibit 18, I
[7] believe, dated January 6th.
[8] A: I don't have it in front of me.
[9] Q: Let me just show it to you.
[10] What I would like you to do, sir, I have a
[11] number of previous inventories in this document, Price
[12] Exhibit 18, which is an inventory dated January 6,
[13] 1994, Price Exhibit 19, which is an inventory dated
[14] December 1, 1993, Price Exhibit 20, which is an
[15] inventory dated April 6, 1993. **That** is all.
[16] If you could tell me whether or not you
[17] remember, with respect to each of these three exhibits,
[18] whether you remember consulting them in the course of
[19] your preparation of **Lehmkuhl 3?**
[20] A: I don't recall using a specific inventory.
[21] Q: Do you recall whether or not you used one or
[22] more inventories?

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[1] A: Yes.
[2] Q: But you don't recall of these three I have
[3] shown you which, if any?
[4] A: No.
[5] Q: **Would** you have used the most recent inventory
[6] that you could find in the file?
[7] A: It's likely. Yes.
[8] Q: And if the January 6, 94 inventory was the
[9] most recent one you could **find**, do you **think** you would
[10] have used that?
[11] A: Yes. It's likely.
[12] Q: Can you tell me physically in Pepper &
[13] **Corazzini's** offices where the 1808 correspondence **file**
[14] is located?
[15] A: In the file room.
[16] Q: There is a central file room?
[17] A: That is correct.
[18] Q: Now, I think Mr. Weber discussed with you a
[19] **little** bit the fact that these other inventories appear
[20] to be inventories only of licenses **granted**, and I
[21] believe the one that you were shown you indicated that
[22] is how you understood it.

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[1] A: That is correct.
[2] Q: Why, on your inventory that you prepared, did
[3] you choose to identify pending applications as well as
[4] those that have been granted?
[5] A: It was my belief that the inventories that
[6] Ms. Richter had previously prepared didn't give the
[7] most up to date information and I wanted to inform the
[8] client, as I have informed other clients, of the status
[9] of their applications.
[10] Q: So I take it this was your idea, it was not
[11] someone that asked you to do this?
[12] A: That is correct.
[13] Q: Now, with respect to Price Exhibit 17, you
[14] testified in response to Mr. Weber's questions that you
[15] sent it to the indicated addressees.
[16] Do you recall knowing at the date of the
[17] memorandum that Mr. Nourain's office was physically in
[18] a different building in **New York** than Mr. Price's
[19] office?
[20] A: I know that now. I don't recall knowing that
[21] then.
[22] Q: So you don't know whether or not you

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[1] separately addressed a copy of Lehmkuhl Exhibit 3 to
[2] Mr. Nourain at his office address, as opposed to the
[3] main Liberty address?
[4] A: It's possible.
[5] Q: It's possible?
[6] A: I don't recall.
[7] Q: Now I want to show you what has previously
[8] been marked as Price Exhibit 16.
[9] The **first** question I would like you to answer
[10] for me is whether or not you **recall** having seen a copy
[11] of this document before today?
[12] A: Yes. I recognize this document.
[13] Q: Is it one that you prepared?
[14] A: Yes. It is.
[15] Q: **MJL** are your initials?
[16] A: That is correct.
[17] Q: It was addressed to HGB. Is that Howard
[18] Barr?
[19] A: That is correct.
[20] Q: We have established what the 1808 file is.
[21] Who is Steve Coran?
[22] A: Steve Coran is an attorney with Rini & Coran.

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[1] Q: Can you tell me the circumstances that led to
[2] the preparation of Price Exhibit 16?
[3] A: As I recall, Steve Coran had contacted me.
[4] He represented a buyer at the time, a potential buyer,
[5] that was interested in acquiring Liberty. He was in
[6] the process of doing a due diligence and he asked me to
[7] verify what he had prepared, what he had gleaned.
[8] Q: So I take it then that Mr. **Coran** told you he
[9] had prepared an inventory of Liberty's licenses and he
[10] wanted to reconcile that with your inventory?
[11] A: Roughly, yes. It wasn't really much of an
[12] **inventory. As** I recall, it was pretty hard to make
[13] out.
[14] Q: Did you receive any kind of authorization
[15] from your client to discuss this information with
[16] Mr. Coran?
[17] A: Yes.
[18] Q: And who in particular authorized you to
[19] discuss that?
[20] A: Peter Price.
[21] Q: Now, the day of the memorandum is April **5th**,
[22] 1995. Do you recall how much in advance of that date

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[1] Mr. Price authorized you to release that information to
[2] **Mr. Coran?**
[3] A: I don't recall.
[4] Q: I mean, could it have been a week or more
[5] time?
[6] A: I don't recall.
[7] Q: At the time that Mr. Price authorized you to
[8] release this information to Mr. Coran, did either of
[9] you make reference in the conversation to the existence
[10] of a license inventory of Liberty's licenses either in
[11] your office or in Liberty's office?
[12] A: I don't recall. I don't think so.
[13] Q: Now, I note on this document the addressees
[14] are just Howard Barr and the **1808** file. Do you know
[15] whether or not a copy of this document was sent to
[16] anyone of the client that is at Liberty?
[17] A: I don't recall.
[18] Q: Turning back to Lehmkuhl Exhibit 3 for a
[19] moment, did either Mr. **Corazzini** or Mr. Barr review
[20] this document in draft form before it went out to the
[21] client?
[22] A: I don't recall **specifically**.

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[1] Q: Did Mr. Barr have a general practice of
[2] reviewing your work before it was sent out to a client,
[3] whether that client is Liberty or someone else?

[4] A: **Yes.**

[5] Q: So if he followed his general practice, he
[6] would have reviewed this particular document?

[7] A: Likely. Yes.

[8] Q: Same question with respect to Mr. Corauini.
[9] Did he have a general practice of reviewing your work
[10] before it went out to a client, any client?

[11] A: Not of this nature. No.

[12] Q: When you say not of this nature, is there
[13] something about this document that would make it
[14] ineligible for Mr. **Corazzini's** review?

[15] A: This is a fairly minor document, as far as I
[16] was concerned at the time. So, there would be no
[17] reason. He wouldn't know. He wouldn't really be able
[18] to accurately review it.

[19] Q: He would have no way of knowing whether it
[20] was right or wrong?

[21] A: Right.

[22] Q: Were you under standing instructions from

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[1] Mr. Corazzini to give him a copy of any correspondence
[2] that you had with any of his clients?

[3] **MR. SPITZER:** Can you define the term "his
[4] clients" with respect to Mr. Corazzini? Do you mean
[5] the **firm**? Because his name is on the firm.

[6] There is no foundation that Liberty was one
[7] of his clients. I am not sure of the context of the
[8] question.

[9] **MR. BECKNER:** I will withdraw the question.

[10] **BY MR. BECKNER:**

[11] Q: Were you under standing instructions from
[12] Mr. Barr to send him a copy of any correspondence you
[13] had with respect to any client for which he was the
[14] billing attorney?

[15] I think we can agree Mr. Barr was the billing
[16] attorney for the client.

[17] A: I was under no standing instruction. It was
[18] merely a courtesy.

[19] Q: It was a courtesy that you sent copies to
[20] Mr. Barr?

[21] A: **Yes.**

[22] Q: Was that also true with respect to

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[1] Mr. **Corazzini's** copy?

[2] A: Yes. That is correct.

A Q: Do you recall at any time discussing this
[4] memorandum with either Mr. Corazzini or Mr. Barr?

[5] A: I don't recall specifically. No.

[6] Q: Do you recall having a conversation with
[7] Mr. Nourain sometime after the time when it was **alleged**
[8] in a pleading **filed** at the SEC by Tom Warner that
[9] Liberty was operating microwave paths without
[10] licenses? Do you recall having a conversation with him
[11] on that **subject**?

[12] **MR. SPITZER:** The time isn't clear, sometime
[13] after. Up to the present? Within?

[14] **MR. BECKNER:** Within a month or two.

[15] **BY MR. BECKNER:**

[16] Q: Just to help you with that, let's say the
[17] months of May or June 1995.

[18] A: I don't recall **specifically**.

[19] Excuse me one moment.

[20] (Discussion off the record between the
[21] witness and Mr. **Spitzer**.)

[22] **BY MR. BECKNER:**

[1] Q: Let me see if I can refresh your
[2] recollection.

[3] Mr. Nourain in his deposition gave the
[4] following testimony. I will read you the question and
[5] the answer.

[6] **MR. SPITZER:** I would just put on the record
[7] that there is a gag order which hasn't permitted this
[8] witness to be privy to the questions and answers posed
[9] to prior witnesses.

[10] **MR. BECKNER:** So?

[11] **MR. SPITZER:** So I thought that applied to
[12] all of us.

[13] **MR. BECKNER:** I am refreshing his
[14] recollection on the record. The gag order applies to
[15] refreshing the witness' recollection off the record.

[16] **MR. SPITZER:** I thought it was in all
[17] contexts. But you can ask your question and I will
[18] object.

[19] **BY MR. BECKNER:**

[20] Q: Here is the **question**. This is the question
[21] that was asked of Mr. Nourain.

[22] "In your previous testimony you said that

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[1] after you learned that Liberty was serving some
[2] buildings by microwave without authorization you were
[3] surprised and you called Michael Lehmkuhl. Did Michael
[4] Lehmkuhl in that situation make any mention of this
[5] February 24th memorandum that has been marked as
[6] Exhibit 17, to your recollection?"

[7] **Mr. Nourain answered:** "I don't recall that.

[8] All I know I was very upset with him as finding what I
[9] had testified and I would definitely remember if he
[10] ever mentioned something like that. But it wasn't a
[11] very pleasant call with him."

[12] Just for the record, that is page 47 of the
[13] continued deposition of **Behrooz** Nourain taken on
[14] August 1, lines 10 through 22.

[15] If you would like to see the transcript, I
[16] will show it to you.

[17] **MR. SPITZER:** What is your question?

[18] **MR. BECKNER:** I haven't asked it yet.

[19] **MR. SPITZER:** Ask a question first.

[20] We have not received a copy of this
[21] transcript, which is surprising since we were supposed
[22] to receive it simultaneously with you. But that is a

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[1] **separate** issue.

[2] **MR. BECKNER:** It certainly is.

[3] **BY MR. BECKNER:**

[4] Q: The question is simply: Does this testimony
[5] given my Mr. Nourain refresh your recollection at
[6] all about a conversation you had with him?

[7] A: No. It does not.

[8] Q: So you recall no conversation with
[9] Mr. **Nourain** which was not pleasant -

[10] A: Yes. I don't recall.

[11] **MR. SPITZER:** Your question didn't relate to
[12] any unpleasant conversation with Behrooz Nourain. I
[13] think it is a more **specific** question. There may have
[14] been other unpleasant conversations.

[15] **MR. BECKNER:** Right. The witness answered
[16] before I was finished the **question**. **Yes**. That was my
[17] intent to ask in the same time context that we have
[18] been discussing.

[19] **BY MR. BECKNER:**

[20] Q: Did there come a time, Mr. Lehmkuhl, in June
[21] or July of 1995, when to your knowledge Liberty **was**
[22] **trying** to gather information about the scope or extent

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(1) of its unlicensed operation of microwave facilities in
(2) New York?

(3) MR. SPITZER: Again I will say what I said
(4) before. We are trying to give you latitude to conduct
(5) your deposition as you wish. If you intend to tie this
(6) back to the February 24th inventory -

(7) MR. BECKNER: In the next question I will do
(8) that.

(9) MR. SPITZER: - I will let him answer the
(10) question.

(11) MR. BECKNER: I promise you the next
(12) question.

(13) THE WITNESS: Could you repeat the question
(14) please?

(15) MR. BECKNER: Read it back please.

(16) (The reporter read the requested portion
(17) of the record.)

(18) THE WITNESS: Yes.

(19) BY MR. BECKNER:

(20) Q: Did you assist Liberty in collecting that
(21) information during the time period I have mentioned?

(22) A: Yes. I did.

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(1) Q: And in the course of your assistance did you
(2) supply anyone at Liberty with a copy of Price Exhibit
(3) 17 or Lehmkuhl3 as it has now been marked?

(4) A: I don't recall.

(5) Q: You don't recall.

(6) Was the nature of that information gathering
(7) request essentially tell us what licenses we have?

(8) MR. SPITZER: I am going to object as beyond
(9) the scope of the deposition.

(10) MR. BECKNER: Are you going to instruct him
(11) not to answer?

(12) MR. SPITZER: I will instruct him not to
(13) answer.

(14) MR. BECKNER: Okay. It's on the record.

(15) BY MR. BECKNER:

(16) Q: I think we will see you again, Mr. Lehmkuhl.

(17) If you were asked during the time we have
(18) been speaking of, Mr. Lehmkuhl, to find out or to tell

(19) Liberty what the status of their licenses and
(20) applications for microwave paths was, do you think it

(21) likely that you would have consulted the 1808

(22) correspondence file to supply such information?

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(1) MR. SPITZER: The time period being June/July
(2) now?

(3) MR. BECKNER: Correct.

(4) THE WITNESS: That would not have been my
(5) sole source, but yes.

(6) MR. BECKNER:

(7) Q: That would have been one of the files?

(8) A: That is correct.

(9) Q: So, had this document been in the file, this
(10) document being Lehmkuhl Exhibit 3, you would have used

(11) it; is that correct?

(12) A: Probably not.

(13) Q: Why would you not have used it?

(14) A: One moment.

(15) (Discussion off the record between the
(16) witness and Mr. Spitzer.)

(17) I would have consulted the database program
(18) that I used in preparing this, but by that time it's

(19) quite likely that this would have been out of date.

(20) MR. SPITZER: This meaning Lehmkuhl 3.

(21) THE WITNESS: Lehmkuhl 3.

(22) BY MR. BECKNER:

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(1) Q: Now I am confused. I thought that Mr. Weber
(2) had asked you whether or not you were obligated to
(3) specifically set up these various tables in the-
(4) document indicating a path name and so on, or whether
(5) or not that information was maintained in some sort of
(6) a database which you could just simply print out, and I
(7) thought I understood you to say, and I could have been
(8) wrong, that what you had to do was to individually
(9) prepare these various schedules of licenses.

(10) Is that what your testimony was?

(11) I just want to clarify.

(12) MR. SPITZER: Again I think you are trying to
(13) capture a few questions. I don't think you stated it
(14) precisely. The record will speak for itself.

(15) I think if you can answer the question
(16) generically, that is fine, without relying specifically
(17) on Mr. Beckner's restatement of the testimony.

(18) THE WITNESS: Well, I am kind of confused by
(19) Mr. Beckner's question.

(20) MR. BECKNER: I will withdraw it. We will go
(21) at it a different way.

(22) BY MR. BECKNER:

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(1) Q: You mentioned in your answer to the previous
(2) question there was a database you had consulted.

(3) A: Yes.

(4) Q: What is the database, who maintains it and
(5) where is it?

(6) A: I maintain it. It's on my computer.

(7) Q: And what information is in it?

(8) A: Information about Liberty's applications and
(9) licenses.

(10) Q: And if you would just take a look at page
(11) 016145 of Exhibit 3 to your deposition, as an example,
(12) is the information that is set forth on this particular
(13) page the kind of information that is in your database?

(14) A: Yes. I suppose it's the kind. Similar.

(15) Q: In other words, there would be a path name?

(16) A: Yes.

(17) Q: An azimuth?

(18) A: Yes.

(19) Q: A latitude and longitude for the azimuth?

(20) A: Yes.

(21) Q: And a status?

(22) A: Yes.

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(1) Q: Who is responsible for maintaining the
(2) currency of that database?

A: A: I am.

(4) Q: At the time you prepared Lehmkuhl Exhibit 3
(5) was the database one of the sources of information that
(6) you consulted in preparing this document?

(7) A: Yes.

(8) Q: How often did you update the database, if you
(9) know?

(10) MR. SPITZER: During what time period?

(11) MR. BECKNER: During the first half of 1995.

(12) THE WITNESS: I don't recall. It wasn't on a
(13) periodic precise basis. Whenever I felt it needed to
(14) be updated.

(15) BY MR. BECKNER:

(16) Q: Did the database list pending as well as
(17) granted applications?

(18) A: Yes.

(19) Q: So, for example, and we are still on page
(20) 16145, if during this time period the application for
(21) the path to 61 Broadway, which is listed here as
(22) pending, were granted, when you learned of the grant

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{1} **would** you have entered that information into your
{2} **database** upon learning of the grant?

{3} A: **Yes.**

{4} Q: Did the database also indicate whether or not
{5} any path was the subject of an STA request?

{6} A: **Yes.**

{7} Q: And, similarly, if an STA request had been
{8} granted for a particular path, would that information
{9} be in the database as well?

{10} A: Just to clarify, I believe at this time **STAs**
{11} were not necessarily granted or asked for for specific
{12} paths. I believe they were requesting STA for specific
{13} licenses or a group of paths. I couldn't distinguish
{14} between one path or another, except by looking at the
{15} file name. Since then we have refined the process and
{16} it might be a little difficult to distinguish.

{17} Q: Well, for example, if we can flush out that
{18} testimony, if there was an amendment to an application
{19} filed which would add, let's just say hypothetically,
{20} three new paths, what you are saying is that an **STA**
{21} request filed for that amendment would cover all three
{22} paths, correct?

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{1} A: Mostlikely. Yes.

{2} Q: And your database would not have that
{3} specific STA information for each of those three
{4} paths? And, again, we are speaking about this 1995
{5} time period.

{6} **MR. SPITZER:** This is a hypothetical.

{7} **MR. BECKNER:** Right.

{8} **THE WITNESS:** I believe **so. Yes.**

{9} **BY MR. BECKNER:**

{10} Q: So, during this period, if someone had
{11} telephoned you and said, Mr. Lehmkuhl, I want to know
{12} **if** we have a license for 1 **New York Plaza**, you could
{13} have consulted your database and answered that
{14} question?

{15} Is that correct?

{16} A: Yes.

{17} Q: Now, when you put together Exhibit 3 to your
{18} deposition did you rely on the information that was
{19} already built into your database or did you go back to
{20} what I will call the primary material, that is, the
{21} actual copies of the grants and so on themselves that
{22} might have been in the **file**?

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{1} A: Yes. That is what I relied on specifically.
{2} But, I mean, yes, I did rely on copies of the licenses
{3} and applications.

{4} Q: So this document is not simply just the
{5} current state of your database as of February 24
{6} without checking back?

{7} A: I don't understand what your question is.

{8} Q: Sure. That is **fine**. I will withdraw it.

{9} Just to clarify, one way you could have
{10} generated a report like this is to simply have done an
{11} information dump from your database on February 24th
{12} without going behind that to see if it was correct or
{13} complete, but I take it what you are saying is that you
{14} did more than simply do that when you prepared this
{15} document.

{16} A: No. Not when I prepared this **document. This**
{17} document was basically a printout of what was in the
{18} database.

{19} Q: But before you sent the document out to the
{20} client and the people on the address, did you double
{21} check the database by actually looking at or inspecting
{22} files that had copies of the granted applications?

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{1} A: Probably not. I would have trusted the
{2} validity of what was in the database because I had
{3} recently prepared it, put it in the database. So there
{4} would have been no reason for me to **do** that.

{5} Q: Was there any **particular** reason why you chose
{6} to generate this inventory in February of '95, as
{7} opposed to say January or some other time?

{8} A: I believe I had just gotten my new database
{9} **program.**

{10} Q: So you wanted to try it out?

{11} A: Well, I wanted to use it.

{12} Q: I take it, as far as you know, there was no
{13} regular schedule -

{14} A: No.

{15} Q: - on which your firm was expected to
{16} generate an inventory. For example, say once a year or
{17} something like that.

{18} A: Not that I knew at time. Yes. That is
{19} correct.

{20} Q: You said you had just gotten this database
{21} program just before you generated Exhibit 3.

{22} A: I believe **so. Yes.**

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{1} Q: Had you used another database program before
{2} that?

{3} A: No.

{4} Q: This was the **first** time that you had in
{5} effect a computer database?

{6} A: That is correct.

{7} Q: And then when you were working with
{8} Mr. Coran, I take it that what you gave him was
{9} information from your database that was current as of
{10} whenever he requested it.

{11} **MR. SPITZER:** If you could show the witness
{12} the exhibit you are referring to.

{13} When you are talking about information he
{14} gave to Mr. Coran, you are referring to an exhibit, I
{15} gather.

{16} **MR. BECKNER:** I am referring to the apparent
{17} comparison between an inventory Mr. Coran put together
{18} of Liberty's licenses and Liberty's inventory which is
{19} referenced in Price Exhibit 16.

{20} **MR. SPITZER:** I think there is a lack of
{21} foundation. I am not sure that Mr. Lehmkuhl gave
{22} anything to Mr. Coran.

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{1} **MR. BECKNER:** We can certainly ask that
{2} question.

{3} **MR. SPITZER:** Maybe we should.

{4} **BY MR. BECKNER:**

{5} Q: Mr. Lehmkuhl, did you supply any information
{6} to Mr. **Coran** about the status of Liberty's licenses
{7} and/or applications?

{8} A: Yes. I did.

{9} Q: And the information that you supplied I take
{10} it was given to Mr. **Coran** sometime before April 5th,
{11} 1995? Or am I wrong about that?

{12} A: I'm not certain. It was an ongoing process.
{13} So some may have been given to him before and some
{14} after.

{15} Q: Whatever information that you gave him, did
{16} it come from your database?

{17} A: I relied on my database, but I also relied on
{18} the records that we had in our files.

{19} Q: So the sole source of the information was not
{20} just the database?

{21} A: That is correct.

{22} Q: Do you recall when you first gave information

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[1] to Mr. Cot-an?
 [2] Was it sometime before April 5th?
 [3] A: I don't recall.
 [4] Q: Let me borrow this a second.
 [5] Do you recall after February 24, 1995 ever
 [6] having occasion, except for the time immediately prior
 [7] to this deposition today, ever having occasion to take
 [8] a look at Lehmkuhl Exhibit 3?
 [9] A: No.
 [10] Q: Did you perform the document search of the
 [11] 1808 correspondence file in conjunction with complying
 [12] with any document request in this case?
 [13] A: Yes. That was part of that. Yes.
 [14] Q: Do you recall whether or not at the time you
 [15] were reviewing the file in response to the document
 [16] request you saw Lehmkuhl Exhibit 3?
 [17] A: I don't recall.
 [18] Q: Who else was involved in your firm in
 [19] responding to the document request?
 [20] A: The paralegal and Mr. Barr.
 [21] Q: Looking at Lehmkuhl Exhibit 4, there are
 [22] initials ELR at the top of page 2 of the exhibit.

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[1] Can you tell me who that is, if you know?
 [2] A: Yes. That would be one of our paralegals.
 [3] Q: So I take it the firm's practice was to bill
 [4] on a hourly basis for paralegal services just as it
 [5] does for lawyer services; is that correct?
 [6] A: In this case, yes.
 [7] Q: If a paralegal had assisted you in preparing
 [8] Lehmkuhl Exhibit 3, would you have expected to see that
 [9] person's time reflected on this bill?
 [10] A: Yes.
 [11] MR. BECKNER: Counsel, I assume since the
 [12] entry beside ELR is redacted, then that entry does not
 [13] reflect work on the inventory.
 [14] MR. SPITZER: I know what you are referring
 [15] to.
 [16] The first representation we made was that we
 [17] provided all of Mr. Lehmkuhl's billing entries and that
 [18] that is what we had done. On reviewing this bill, the
 [19] entry for ELR, if I recall, reflected a call to
 [20] Gettysburg, nothing more than that. There was no
 [21] reference in the description to an inventory.
 [22] Now, whether or not that call to Gettysburg

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[1] related to this inventory, I will not speculate.
 [2] MR. BECKNER: Obviously. I am simply asking
 [3] for what is on the document.
 [4] MR. SPITZER: It may not have been a call to
 [5] Gettysburg. It may have been a status of a license. I
 [6] just don't know.
 [7] MR. BECKNER: I will pass the witness to my
 [8] colleague at the end of the table.
 [9] MR. KIRKLAND: Could we take a short break?
 [10] Would this be a good time for a live-minute break?
 [11] I don't anticipate that we won't be done by
 [12] noon at the latest with what I have, which isn't much.
 [13] (Recess.)
 [14] MR. KIRKLAND: Back on the record.
 [15] EXAMINATION BY COUNSEL FOR CABLEVISION OF NEW
 [16] YORK CITY- PHASE I
 [17] BY MR. KIRKLAND:
 [18] Q: Good morning, Mr. Lehmkuhl.
 [19] A: Good morning.
 [20] Q: My name is James Kirkland. I am with the

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[1] Pardon me if this has been clarified on the
 [2] record. If it has, I will retract it.
 [3] Is Mr. Spitzer your attorney?
 [4] A: No. I don't believe so.
 [5] Q: You have not engaged Mr. Spitzer to represent
 [6] you personally in connection with these proceedings?
 [7] A: No.
 [8] Q: Is Mr. Begleiter your attorney?
 [9] A: No.
 [10] Q: Have you engaged him to represent you
 [11] personally in this proceeding?
 [12] A: No. I have not.
 [13] Q: Have you engaged either of their firms?
 [14] A: No.
 [15] MR. KIRKLAND: I would just note for the
 [16] record that I question the basis on which Mr. Spitzer
 [17] has instructed the witness to not answer questions in
 [18] any circumstance, either in the first deposition or in
 [19] this one.
 [20] BY MR. KIRKLAND:
 [21] Q: Did you have any discussions with Mr. Spitzer
 [22] about Lehmkuhl Exhibit 3 prior to this deposition?

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[1] A: Yes. I did.
 [2] Q: And what were those discussions?
 [3] MR. SPITZER: Objection. That is
 [4] privileged.
 [5] MR. KIRKLAND: On what basis?
 [6] MR. SPITZER: He is an agent for our client
 [7] and we are representing him in that capacity.
 [8] BY MR. KIRKLAND:
 [9] Q: Is there any joint defense agreement between
 [10] yourself, Liberty and the Pepper & Corazzini firm or
 [11] any combination of those people?
 [12] A: No.
 [13] MR. SPITZER: I instruct you not to answer
 [14] these questions.
 [15] BY MR. KIRKLAND:
 [16] Q: You won't answer whether there is a joint
 [17] defense agreement?
 [18] MR. SPITZER: He has answered that question,
 [19] but I am not going to permit this line of inquiry.
 [20] That is correct.
 [21] BY MR. KIRKLAND:
 [22] Q: Now, Mr. Lehmkuhl, do you believe that you

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[1] have your own interests in this proceeding?
 [2] A: Yes. I do.
 [3] Q: What are those interests?
 [4] MR. SPITZER: I am going to object. This
 [5] question is beyond the scope of the deposition that was
 [6] noticed by the judge.
 [7] MR. KIRKLAND: I think it gets to the conduct
 [8] of this deposition since you have been instructing this
 [9] witness not to answer questions.
 [10] MR. SPITZER: I am instructing you not to
 [11] answer this question.
 [12] MR. KIRKLAND: So, your position for the
 [13] record is that this is privileged on what ground,
 [14] please? That he is an agent?
 [15] MR. SPITZER: The conversations that we have
 [16] had with Mr. Lehmkuhl are privileged. That is correct.
 [17] MR. KIRKLAND: On the basis that he is an
 [18] agent or your client?
 [19] MR. SPITZER: I will not state a basis for
 [20] the privilege. If you wish to raise this in a motion

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[1] I ask for it, to a recitation of the basis for your
[2] objection.
[3] **MR. SPITZER:** The basis is privilege.
[4] Mr. Kirkland, if you have another question,
[5] you may ask it.
[6] **MR. KIRKLAND:** Is it your position that you
[7] are entitled to instruct this witness not to answer
[8] questions because he is an agent of Liberty?
[9] **MR. SPITZER:** We can instruct the witness to
[10] answer or not answer. That is correct, Mr. Kirkland.
[11] Next question, please.
[12] **MR. KIRKLAND:** I think we will be taking this
[13] one up with the judge.
[14] **BY MR. KIRKLAND:**
[15] Q: Let's focus in on the period of 1994 and the
[16] first half of 1995. Let's take it through May of
[17] 1995. Unless I specify otherwise, that will be the
[18] time period that my questions refer to.
[19] Do you recall during that time period how
[20] many memos you addressed directly to Peter Price?
[21] **A:** No. I don't.
[22] Q: Do you have a rough idea of how many it might

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[1] have been?
[2] **A:** No.
[3] Q: More than five?
[4] **A:** I don't recall.
[5] Q: More than ten?
[6] **A:** I don't recall.
[7] Q: And you reviewed no documents in preparation
[8] for this deposition?
[9] **A:** No.
[10] Q: In the course of reviewing the files, as you
[11] testified earlier, that didn't refresh your
[12] recollection as to how many memos you might have sent
[13] to Mr. Price?
[14] **MR. SPITZER:** I don't think there was
[15] testimony that he reviewed the files.
[16] **BY MR. KIRKLAND:**
[17] Q: Did you review the files in connection with
[18] assisting in the document production in this case?
[19] **A:** Yes. I did.
[20] Q: In the course of reviewing those files you
[21] didn't notice how many memos you had sent to Peter
[22] Price?

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[1] **A:** I didn't keep track.
[2] Q: Did you develop an impression as to whether
[3] it was under five, more than five?
[4] **A:** No. I did not.
[5] Q: Were you thinking very hard when you looked
[6] at those documents?
[7] **MR. SPITZER:** I object to the nature of that
[8] question. Do not answer.
[9] Mr. Kirkland, please ask questions that
[10] aren't abusive.
[11] **BY MR. KIRKLAND:**
[12] Q: Do you recall how many letters you sent to
[13] Mr. Price in the course of that time period?
[14] **A:** No. I do not.
[15] Q: Do you have an impression whether it was many
[16] or few?
[17] **A:** I don't recall.
[18] Q: Did you send any memos or letters to
[19] Mr. Price during that time period?
[20] **A:** It's possible. Yes.
[21] Q: Well, we know there was one.
[22] You do recall sending that one to Mr. Price?

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[1] **A:** Based on what you have told me, yes.
[2] Q: You are basing your answer that you sent that
[3] memo to Mr. Price on what I have told you?
[4] **A:** That is correct.
[5] Q: Not on your review of Lehmkuhl Exhibit 3?
[6] **A:** On my review of Lehmkuhl Exhibit 3.
[7] Q: Which is it?
[8] **MR. SPITZER:** What do you mean, which is it?
[9] **MR. KIRKLAND:** The witness just testified
[10] that he was basing his recollection that he had sent
[11] this memo to Mr. Price on what I told him. Then I
[12] asked whether it was based on Lehmkuhl Exhibit 3 and he
[13] said, yes.
[14] **MR. SPITZER:** If you have a question, let's
[15] ask him that question.
[16] **BY MR. KIRKLAND:**
[17] Q: Which is the recollection based on?
[18] **A:** I am basing it on both. Since this is in
[19] front of me, I will base it on the fact that this memo
[20] here in front of me was sent in the time period that
[21] you were inquiring about.
[22] Q: So before you sat down in this room this

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[1] morning you had no recollection of sending that memo to
[2] Peter Price?
[3] **MR. SPITZER:** That is not what the witness
[4] said.
[5] **BY MR. KIRKLAND:**
[6] Q: You may answer.
[7] **A:** I had a recollection. I knew of this memo.
[8] Yes.
[9] Q: In light of your knowing of that memo, why
[10] did you answer my earlier question that you may have
[11] sent materials to Mr. Price?
[12] **A:** It's possible that in the course of our
[13] representation that I may have sent memos to Mr. Price.
[14] Q: But you definitely did in at least one case.
[15] Yes?
[16] **A:** Yes. I did.
[17] Q: Are there any other cases that you definitely
[18] remember sending materials to Mr. Price?
[19] **A:** I don't recall.
[20] Q: You don't recall whether there were any other
[21] cases where you sent material to Mr. Price?
[22] **A:** Yes. I have sent material to Mr. Price. I

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[1] don't recall what I sent to Mr. Price in that time
[2] period except for this document here in front of me.
[3] Q: But you have no recollection as to the
[4] approximate number of items you sent to Mr. Price?
[5] **A:** No. I do not.
[6] Q: You have no even rough estimate?
[7] **A:** No. I stated that earlier. No. I do not.
[8] Q: During this time period did you send memos or
[9] letters to Mr. Nourain?
[10] **A:** Yes.
[11] Q: Do you have a recollection as to how many
[12] approximately?
[13] **A:** Well, at least one.
[14] Q: Is that all you can recall?
[15] **A:** That is all I can recall at this time. Yes.
[16] Q: You have no general impression as you sit
[17] here today?
[18] **A:** I can't give you a number.
[19] Q: I'm not asking for a number. I'm asking for
[20] a rough estimate.
[21] Do you have a rough estimate of how many
[22] items you sent to Mr. Nourain during the 1994 -

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[1] MR. SPITZER: Do you want a numerical answer?
 [2] If you would phrase the question so it is
 [3] designed to produce an answer, then you will get a more
 [4] precise answer.
 [5] MR. KIRKLAND: I think the term rough
 [6] estimate is fair.
 [7] MR. SPITZER: Rough estimate in terms of
 [8] pounds, in terms of boxes, in terms of number of pages,
 [9] in terms of frequency?
 [10] If you ask a precise question, you will get a
 [11] precise answer.
 [12] BY MR. KIRKLAND:
 [13] Q: Do you have a rough estimate of the number of
 [14] items, and by that I mean an individual letter or an
 [15] individual memo, that you sent to Mr. Nourain during
 [16] the 1994 and early 1995 time frame, as I have defined
 [17] it?
 [18] A: No. I do not. I don't have a rough
 [19] estimate.
 [20] Q: Do you recall if it was less than 10?
 [21] A: I don't recall.
 [22] Q: So you have no recollection if it was 10, 20,

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[1] 30, 100?
 [2] A: No. I do not. It probably wouldn't have
 [3] been 100. It would have been less than 100 maybe.
 [4] Q: Based on your review of the Liberty files, if
 [5] you had to make your best estimate of the number of
 [6] letters you sent, what would that best estimate be?
 [7] MR. SPITZER: To who?
 [8] MR. KIRKLAND: To Nourain.
 [9] THE WITNESS: I don't know. It's hard to
 [10] estimate. Because there was no prescribed procedure
 [11] for anything to be sent out, there is nothing to base
 [12] my memory on.
 [13] Like I stated previously, it could have been
 [14] under 100. I don't recall how many. I don't recall
 [15] what memos I sent to Mr. Nourain in this time period.
 [16] BY MR. KIRKLAND:
 [17] Q: You understand what it means to give me your
 [18] best estimate, don't you?
 [19] MR. SPITZER: Mr. Kirkland, if you have a
 [20] question, let's move on to a meaningful question.
 [21] MR. KIRKLAND: I will have an answer to this
 [22] question.

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[1] THE WITNESS: No. I don't.
 [2] Could you tell me what it means for me to
 [3] give you my best estimate?
 [4] BY MR. KIRKLAND:
 [5] Q: Yes.
 [6] You have testified that you have looked at
 [7] files that contain materials which are the subject of
 [8] the question. Based on that review, I am asking you
 [9] what your best estimate is?
 [10] A: My best estimate is -
 [11] Q: Question mark.
 [12] A: - maybe less than 75. I don't know.
 [13] Q: That was with respect to Mr. Nourain.
 [14] With respect to Mr. Price, what is your best
 [15] estimate of the number of individual items you sent to
 [16] Mr. Price?
 [17] A: Less than that.
 [18] MR. SPITZER: Mr. Kirkland, these questions
 [19] have been asked and answered. If you have something
 [20] meaningful to move on to, I suggest we do that.
 [21] MR. KIRKLAND: If you can point me where they
 [22] have been asked and answered, I will withdraw the

[1] question.
 [2] MR. SPITZER: We can reread the entire litany
 [3] of questions that you have been posing for the past
 [4] five minutes.
 [5] MR. KIRKLAND: Well, he answered the
 [6] 161 questions with respect to Mr. Nourain, so I assume you
 [7] have no objection to him answering with respect to
 [8] Mr. Price.
 [9] MR. SPITZER: I have no objection. He has
 [10] already answered it. That is the only issue.
 [11] BY MR. KIRKLAND:
 [12] Q: What is your best estimate of the number of
 [13] individual items you sent to Mr. Price?
 [14] A: My best estimate is less than what I sent to
 [15] Mr. Nourain.
 [16] Q: Which was less than 75?
 [17] A: Yes.
 [18] Q: Now, do you have any recollection of any
 [19] conversations that you had with Mr. Nourain after you
 [20] had sent him a memo that related to what was in that
 [21] memo or letter?
 [22] MR. SPITZER: Could you restate the question,

[1] please?
 [2] BY MR. KIRKLAND:
 [3] Q: Do you have any recollection of any
 [4] discussion with Mr. Nourain after you had sent
 [5] Mr. Nourain a memo or letter which related to the
 [6] subject of that memo or letter?
 [7] MR. SPITZER: Wait a minute. Wait a minute.
 [8] Would you please read the question?
 [9] (The reporter read the requested portion
 [10] of the record.)
 [11] MR. SPITZER: Is there any memo you are
 [12] referring to?
 [13] MR. KIRKLAND: It's a general question.
 [14] MR. SPITZER: Does he ever recall having a
 [15] conversation with Mr. Nourain about a memo after he had
 [16] sent the memo to Mr. Nourain?
 [17] MR. KIRKLAND: Thank you for that editorial
 [18] commentary.
 [19] MR. SPITZER: Is that the question?
 [20] BY MR. KIRKLAND:
 [21] Q: Does the witness understand the question?
 [22] A: I don't understand how it relates to this,

[1] but yes. I don't remember any specific conversations,
 [2] but it's quite possible that I had a discussion with
 [3] Mr. Nourain after I sent him a memo.
 [4] Q: How often?
 [5] A: I have no idea.
 [6] Q: You have dealt with a variety of different
 [7] kinds of clients in the course of your duties as an
 [8] attorney.
 [9] A: Yes.
 [10] Q: Would you say some clients are more attentive
 [11] to detail than others?
 [12] A: Yes.
 [13] Q: Do you have clients that review all the
 [14] materials you send them, to your knowledge?
 [15] A: Yes.
 [16] Q: On a spectrum of attentiveness where would
 [17] you rank Liberty as a client?
 [18] MR. SPITZER: I am going to object. This is
 [19] not within the scope of the deposition that the judge
 [20] has authorized to be taken.
 [21] BY MR. KIRKLAND:
 [22] Q: You may answer.

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[1] **A:** It's hard to say. I would say at least on a
 [2] scale of one to ten - could you give me the scale
 [3] again please?
 [4] **Q:** One to ten would be great.
 [5] **A:** Ten would be great?
 [6] **Q:** Ten is very attentive. One is inattentive.
 [7] **A:** I would say somewhere between five and ten.
 [8] **Q:** Did you consider Mr. Price individually to be
 [9] attentive to the details of your work with the FCC?
 [10] **MR. SPITZER:** I am going to object and
 [11] instruct you not to answer since this is beyond the
 [12] scope of the deposition.
 [13] **MR. KIRKLAND:** It absolutely is not, and I am
 [14] not going to say why because I am not going to coach
 [15] the witness.
 [16] **BY MR. KIRKLAND:**
 [17] **Q:** Please answer.
 [18] **MR. SPITZER:** I am instructing him not to
 [19] answer. If you want to ask a question that relates to
 [20] this document, you can ask about this document.
 [21] **MR. KIRKLAND:** I am certain I am allowed to
 [22] establish a foundation for my questions about this

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[1] document. This is a foundational question and you are
 [2] instructing him not to answer.
 [3] **MR. SPITZER:** If you bring it back to this
 [4] document quickly, then that is fine.
 [5] **MR. KIRKLAND:** Could you read the question
 [6] please?
 [7] (The reporter read the requested portion
 [8] of the record.)
 [9] **THE WITNESS:** I don't have much to base an
 [10] answer to that question on. At that time these memos
 [11] were sent to Peter Price, but I primarily dealt with
 [12] Behrooz. I don't know how attentive Mr. Price was to
 [13] these.
 [14] **BY MR. KIRKLAND:**
 [15] **Q:** Do you recall having any discussions with
 [16] Mr. Price about a memo or a letter that you addressed
 [17] to him about the contents of that letter after he had
 [18] received it?
 [19] **A:** What letter?
 [20] **Q:** Any letter or memo that you sent to
 [21] Mr. Price.
 [22] **A:** What time frame are we talking about?

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[1] **Q:** We are talking about 1994 and 1995 through
 [2] May.
 [3] **A:** I don't recall specifically having a
 [4] discussion with Mr. Price about any specific memo. No.
 [5] **Q:** Do you generally recall having discussions
 [6] with him about memos or letters after you had sent
 [7] them?
 [8] **A:** Not in that time period. No.
 [9] **Q:** Do you recall if there were any instances in
 [10] 1994 or the first half of 1995, as I have defined it,
 [11] where you simultaneously filed an FCC license
 [12] application and a request for STA?
 [13] **A:** I don't recall any specific instance of
 [14] that. No.
 [15] **Q:** Based on your review of documents, both in
 [16] this deposition and at any other time, do you recall if
 [17] you filed any such license application simultaneously
 [18] with STAs?
 [19] **A:** No. I do not.
 [20] **Q:** Is it your belief as you sit here today that
 [21] you did not file any simultaneous applications with
 [22] STAs during that time frame?

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[1] **A:** No. It's just that I don't recall. It's
 [2] quite possible, but I don't recall.
 [3] **Q:** How many applications did you file during
 [4] that time frame?
 [5] **MR. SPITZER:** I am going to instruct the
 [6] witness not to answer. This is now beyond the scope of
 [7] this deposition unless you can represent that this is a
 [8] foundational question which will bring it back to this
 [9] memorandum.
 [10] **MR. KIRKLAND:** I will so represent.
 [11] The document that we are looking at is a
 [12] document we saw for the first time, which is an
 [13] inventory of all the licenses that he had applied for
 [14] through a certain time period with an indication of
 [15] status. I believe I am entitled to know the universe
 [16] with respect to the question I am asking as to whether
 [17] or not there was an STA filed at the same time as the
 [18] license application. This witness was primarily
 [19] responsible.
 [20] **MR. SPITZER:** How does that relate to the use
 [21] or preparation of this document?
 [22] **MR. KIRKLAND:** I will represent that it

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[1] will.
 [2] **MR. SPITZER:** I expect that you will do so
 [3] shortly or else he will receive an instruction not to
 [4] answer.
 [5] You have not been present at the myriad of
 [6] depositions, Mr. Kirkland, but this material has been
 [7] covered over the course of a month of depositions. The
 [8] purpose of this deposition was not to regurgitate
 [9] information that has been recited in the past, but
 [10] merely to focus on this one individual document.
 [11] **MR. KIRKLAND:** Yes. And I am certainly aware
 [12] that depositions were conducted without the benefit of
 [13] these documents that the judge compelled you to
 [14] produce.
 [15] **MR. SPITZER:** Mr. Kirkland, you have not
 [16] participated in this, nor has your associate Mr. Holt,
 [17] and I would suggest that if you had been present or if
 [18] someone of your firm had been present, we would not
 [19] need to review this material again.
 [20] **MR. KIRKLAND:** I will represent to you,
 [21] Mr. Spitzer, that I am familiar with the record of the
 [22] depositions. As you know, we all get transcripts. My

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[1] questioning is tailored not to go over old ground
 [2] except to the extent that the old ground was covered
 [3] without the benefit of the documents which your client
 [4] did not produce.
 [5] **MR. SPITZER:** Could you read back the
 [6] question please?
 [7] (The reporter read the requested portion
 [8] of the record.)
 [9] **THE WITNESS:** I don't recall how many
 [10] applications I filed during that time period. That
 [11] would be, however, a matter of public record.
 [12] **BY MR. KIRKLAND:**
 [13] **Q:** Is it more than 50?
 [14] **A:** I don't recall.
 [15] **Q:** Do you think you filed STAs simultaneously
 [16] with license applications in a significant number of
 [17] those cases?
 [18] **MR. SPITZER:** I believe that question has
 [19] been asked and answered.
 [20] **THE WITNESS:** No.
 [21] **BY MR. KIRKLAND:**
 [22] **Q:** What was your general understanding of when

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[1] you would ask for an STA and when you would not?

[2] MR. SPITZER: I am going to instruct the
[3] witness not to answer this question.

[4] This question has been reviewed in detail in
[5] prior depositions and **does** not bear on the subject
[6] matter for which the judge authorized this deposition
[7] to be taken.

[8] MR. KIRKLAND: We have a document here,
[9] **Lehmkuhl 3**, that lists over ten FCC applications which
[10] were filed without a request for an STA.

[11] I don't believe that this question has been
[12] asked. I reviewed the transcript. I was reviewing the
[13] transcript during the earlier questioning to make sure
[14] this question hadn't been asked and answered.

[15] MR. SPITZER: This question has been asked.
[16] The subject matter has been covered in detail with
[17] respect to the testimony of many witnesses from
[18] Liberty.

[19] I will permit you to answer this one
[20] question, but we will not pursue this issue.

[21] THE WITNESS: Please repeat the question.

[22] (The reporter read the requested portion

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[1] of the record.)

[2] THE WITNESS: My general understanding for a
[3] new application is when I would get a request from
[4] Liberty, **unless** it was a pending STA, I would then
[5] renew it unless the license was granted.

[6] BY MR. KIRKLAND:

[7] Q: I'm sorry. I am not sure I understand your
[8] answer.

[9] Is it that it was your understanding that you
[10] were to **file** for an STA at the same time you filed an
[11] FCC license application again?

[12] A: No. It was not.

[13] Q: Did you have an understanding of the
[14] circumstances under which Liberty expected you to file
[15] an STA at the same time you filed an FCC application?

[16] MR. SPITZER: At the same time that he filed
[17] an application?

[18] MR. KIRKLAND: Yes.

[19] MR. SPITZER: If there were such
[20] circumstances or understandings.

[21] THE WITNESS: To my knowledge there were no
[22] circumstances or understandings that that would be the

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[1] case.

[2] BY MR. KIRKLAND:

[3] Q: So if I might characterize your answer,
[4] subject to your counsel's objection, was it your
[5] understanding that you were not to file an **STA with** an
[6] FCC license application unless you were instructed to
[7] do so by your client?

[8] A: That is correct.

[9] Q: Was that based on any conversations that you
[10] had with anyone at Liberty or -

[11] MR. SPITZER: I am going to object.

[12] MR. KIRKLAND: Could I **finish** my question
[13] before **you object**?

[14] MR. SPITZER: No. You may not. I am going
[15] to state an objection right now.

[16] This is beyond the scope of the deposition
[17] the judge has authorized. It's invasive of a privilege
[18] between Mr. Lehmkuhl and his client. It is material
[19] that has been covered ad nauseam in prior depositions,
[20] Mr. Kirkland, and I am afraid we are simply going to
[21] have to end this **line** of inquiry.

[22] MR. KIRKLAND: I understand your desire to

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[1] end this line of inquiry. That is not compelling to
[2] me. And if you are going to tell me that you are not
[3] going to allow this witness to answer in light of the
[4] production of **Lehmkuhl 3**, then you may instruct the
[5] witness not to answer, which I question your authority
[6] to do in any case.

[7] MR. SPITZER: That is fine. You can restate
[8] your question, if you wish to.

[9] MR. KIRKLAND: Well, since you interrupted
[10] me.

[11] MR. SPITZER: I did interrupt **you**. You can
[12] restate your question.

[13] MR. KIRKLAND: I would appreciate it if you
[14] would let me **finish** my questions in the future before
[15] you interrupt and object.

[16] MR. SPITZER: If you didn't make them
[17] paragraphs of compound questions and predicates and if
[18] you would ask a question that was properly formed, then
[19] we could answer it.

[20] MR. KIRKLAND: I don't believe I have heard
[21] an objection on compound yet.

[22] MR. KIRKLAND: Could you read what was my

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[1] question before Mr. **Spitzer** interrupted?

[2] (The reporter read the requested portion
[3] of the record.)

[4] BY MR. KIRKLAND:

[5] Q: Let me rephrase the question since it
[6] followed an earlier question which you had answered.

[7] Your understanding that you were not to **file**
[8] **STAs** unless you were specifically requested by Liberty,
[9] was that understanding based on any discussions with
[10] anyone at Liberty or anyone at Pepper & Corazzini?

[11] MR. SPITZER: I am going to instruct the
[12] witness not to answer because, first, it is privileged
[13] and, second, this does not relate to anything that
[14] pertains to the preparation, knowledge or use of the
[15] February 24, 1995 memorandum.

[16] MR. KIRKLAND: Are you instructing the
[17] witness not to answer?

[18] MR. SPITZER: Yes. I am. That is correct.

[19] MR. KIRKLAND: And which is the portion that
[20] you **object** to?

[21] MR. SPITZER: The question in its entirety.

[22] MR. KIRKLAND: The Pepper & Corazzini?

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[1] MR. SPITZER: The question in its entirety.

[2] MR. KIRKLAND: So, it's your position that
[3] any understanding that **this** attorney had with respect
[4] to when he was supposed to file an STA request is
[5] privileged?

[6] If so, why didn't you object to the answer to
[7] the earlier question?

[8] MR. SPITZER: The question is beyond the
[9] scope of this deposition, Mr. Kirkland.

[10] Next question.

[11] MR. KIRKLAND: You are instructing him not to
[12] answer based on it being beyond the scope or it being
[13] privileged?

[14] MR. SPITZER: Both.

[15] BY MR. KIRKLAND:

[16] Q: Did you develop your understanding of when
[17] you were to file for an STA from any discussions with
[18] Liberty?

[19] A: I'm not sure I understand your question.

[20] Q: I think you have testified that you did have
[21] an understanding of when you were supposed to **file** an
[22] **STA**.

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[1] My question is: Was that understanding, and
[2] you don't to have to get into the understanding, but
[3] was that understanding based on explicit discussions
[4] with anyone at Liberty?

[5] **A:** I don't recall. It's likely.

[6] **Q:** Did you ever convey to anyone at Liberty that
[7] it was your plan to routinely file requests for STAs at
[8] the same time you requested license applications?

[9] **MR. SPITZER:** I am going to instruct the
[10] witness not to answer. This is beyond the scope of the
[11] deposition.

[12] **BY MR. KIRKLAND:**

[13] **Q:** In your experience generally STAs are
[14] requested when there is some exigent circumstances; is
[15] that correct?

[16] **MR. SPITZER:** I am going to instruct the
[17] witness not to answer.

[18] Same objection.

[19] Mr. Kirkland, if my recollection is
[20] correct -

[21] **MR. KIRKLAND:** I have withdrawn the question,
[22] Mr. Spitzer. I don't think I need you to make any more

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[1] comment.

[2] **MR. SPITZER:** Excuse me. I will comment as
[3] soon as there is a new question.

[4] **MR. KIRKLAND:** I have little doubt.

[5] **MR. BECKNER:** Save it for the next one.

[6] **BY MR. KIRKLAND:**

[7] **Q:** You understand that Liberty required some
[8] sort of authorization before the FCC before they could
[9] turn on a microwave transmitter?

[10] **MR. SPITZER:** Same objection. Even though
[11] the answer is an obvious one, this is material that has
[12] been covered in prior depositions.

[13] **BY MR. KIRKLAND:**

[14] **Q:** When you prepared the inventory in February
[15] of 1995, did you attempt to ascertain what facilities
[16] Liberty was actually operating?

[17] **A:** No. I did not.

[18] **Q:** Would that have been material information to
[19] you from the standpoint of FCC compliance?

[20] **A:** I had no reason to believe otherwise. So,
[21] no, it would not.

[22] **Q:** The discussions with Mr. Coran's client about

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[1] the acquisition of Liberty, had those commenced at the
[2] time the February 23, 1995 inventory was prepared?

[3] **MR. SPITZER:** February 24 inventory?

[4] **MR. KIRKLAND:** I'm sorry. That is correct.

[5] **THE WITNESS:** I don't recall. Sometime
[6] after, I believe, but I'm not positive.

[7] **BY MR. KIRKLAND:**

[8] **Q:** If you will look again at Lehmkuhl No. 3.
[9] If I am understanding this chart correctly,
[10] and please contradict me if I am not, this indicates
[11] that there were approximately six applications, those
[12] filed on December 9, 1994, that had at that point been
[13] pending for nearly three months.

[14] Is that an accurate reading?

[15] **MR. SPITZER:** Could you point to a particular
[16] page of this document?

[17] **MR. KIRKLAND:** I'm sorry. It is FCC/CP
[18] 016140.

[19] **THE WITNESS:** And your question again was
[20] what?

[21] **BY MR. KIRKLAND:**

[22] **Q:** Is it an accurate reading of this chart that

[1] as of the time of preparation there were six
[2] applications that were pending for nearly three months?

[3] **A:** That is correct. Although, the days pending
[4] may be off by a day or two.

[5] **Q:** What was your understanding, if any, when you
[6] prepared this inventory of when Liberty expected those
[7] licenses to be granted?

[8] **A:** I don't know when Liberty did expect them to
[9] be granted. I would have assumed that they would have
[10] known they were granted when they received the license.

[11] **Q:** Were you familiar with the provisions of
[12] Liberty's contracts with apartment buildings?

[13] **A:** No.

[14] **Q:** Did anyone from Liberty ever tell you that it
[15] was their understanding that once an FCC license
[16] application had been filed that it would be granted
[17] within 60 days?

[18] **MR. SPITZER:** I am going to object for the
[19] reason I have stated many times over. This is beyond
[20] the scope of this deposition.

[21] **MR. KIRKLAND:** Mr. Spitzer, we have a
[22] document which you produced showing several license

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[1] applications which were pending for a period of three
[2] months. We have testimony from your client as to what
[3] their expectations were as to when things were
[4] granted. I am entitled to determine what this witness
[5] knows about your client's expectations.

[6] **MR. SPITZER:** Mr. Kirkland, you might have
[7] been entitled in prior depositions to explore all sorts
[8] of issues, many of which were explored. They were not
[9] explored then. The time has passed. This deposition
[10] is limited in scope.

[11] The judge in a footnote with particularity
[12] defined the scope of this deposition. If you wish to
[13] dispute the judge's definition of the scope of the
[14] deposition, go back to the judge and renew your
[15] application for a broader deposition.

[16] You will not ask questions beyond the scope
[17] of footnote 1 of the order.

[18] **MR. KIRKLAND:** This precisely relates to
[19] information contained on this chart as to how long
[20] these applications had been pending.

[21] **MR. SPITZER:** If you wish to ask a question
[22] that relates to the chart, you may do so, but the

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[1] question you asked, and if you wish to have it read
[2] back, you can do so, did not relate to the knowledge,
[3] use or preparation of this inventory.

[4] **MR. KIRKLAND:** It does relate to the
[5] knowledge, use or preparation of this inventory because
[6] there is no dispute that this document was forwarded to
[7] your client. I am entitled to determine what his
[8] understanding was associated with this document. That
[9] is what I am attempting to do.

[10] **MR. SPITZER:** You can ask Mr. Lehmkuhl about
[11] his understanding of this document, but if you had been
[12] present at the depositions last week of Mr. Nourain or
[13] Mr. Price, or if a representative of your firm had
[14] chosen to be present, maybe you could have asked them
[15] about their understanding. But you chose not to be
[16] there, Mr. Kirkland, and therefore you will not ask
[17] questions beyond the scope of this deposition of this
[18] witness.

[19] **MR. KIRKLAND:** We have a witness here and I
[20] am entitled to get his understanding of your client's
[21] view. This attorney was interacting with your client
[22] and there is extensive testimony about the nature of

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[1] those interactions.

[2] We now have a document that shows that these
[3] applications were pending for 90 days. I am entitled
[4] to know what this attorney's understanding of his
[5] client's expectations were. I could not have elicited
[6] that information from Mr. Price and Mr. Nourain. I
[7] have reviewed their testimony and it has nothing to do
[8] with this issue.

[9] **MR. SPITZER:** Then maybe the questions
[10] weren't asked and that is because maybe you chose not
[11] to be there, Mr. Kirkland.

[12] If you wish to restate a question, we will
[13] listen to the question and decide whether or not it is
[14] within the scope and then determine whether or not it
[15] should be answered.

[16] **BY MR. KIRKLAND:**

[17] Q: At the time you prepared this inventory, did
[18] you have an understanding of what Liberty's
[19] expectations were with respect to FCC processing times
[20] of FCC license applications?

[21] A: Not specifically.

[22] Q: When you looked at the fact that these

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[1] licenses had been pending for three months, did that
[2] raise any questions in your mind as to whether that
[3] might create problems for your client?

[4] A: No. It did not.

[5] Q: Did you ever tell anyone at Liberty that the
[6] typical processing time for a microwave license
[7] application was 60 days?

[8] **MR. SPITZER:** I will object as beyond the
[9] scope of the deposition.

[10] **BY MR. KIRKLAND:**

[11] Q: You may answer.

[12] **MR. SPITZER:** No. He may not answer.

[13] **MR. BECKNER:** Before you ask another
[14] question, I would like to note for the record that
[15] Time-Warner Cable of New York City would join in any
[16] motion to compel answers to the question which has just
[17] been the subject of an instruction, and the prior
[18] question, which was also subject to an instruction.

[19] I am not going to clutter it up with more
[20] dialogue, but I do want to note the concurrence of
[21] Time-Warner.

[22] **MR. KIRKLAND:** Mr. Spitzer, is it your

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[1] position that either of the preceding questions has
[2] been asked or answered?

A **MR. SPITZER:** The questions were both asked
[4] and answered and were the proper subject of inquiry at
[5] prior depositions which went on for many hours where
[6] you either chose to be present or absent of your own
[7] volition. You had the full opportunity and your client
[8] had the full opportunity to have those questions
[9] asked. If they were not asked, that was by your own
[10] choice, Mr. Kirkland.

[11] **MR. KIRKLAND:** But it is your position that
[12] these precise questions have been asked and answered?

[13] **MR. SPITZER:** We will comb the record, but
[14] the subject matter was covered and if it was not
[15] covered, it is irrelevant because the subject matter is
[16] not properly the subject matter of to & y's deposition,
[17] which was defined by the judge in a footnote to an
[18] order, which you have in your possession.

[19] **BY MR. KIRKLAND:**

[20] Q: At the time you prepared the February 23,
[21] 1995 inventory -

[22] **MR. SPITZER:** February 24.

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[1] **MR. KIRKLAND:** Pardon me.

[2] **BY MR. KIRKLAND:**

A Q: At the time you prepared the February 24,
[4] 1995 inventory, is it your testimony that you had no
[5] understanding of Liberty's expectations as to the
[6] normal processing time of an FCC license application?

[7] A: No.

[8] Q: That is not your testimony?

[9] **MR. SPITZER:** Could you restate the
[10] question? The question was ambiguous. I don't think
[11] the answer no he meant to say.

[12] **MR. KIRKLAND:** I will restate it.

[13] **BY MR. KIRKLAND:**

[14] Q: At the time you prepared this inventory, did
[15] you have any understanding of your client's
[16] expectations or understandings as to the normal
[17] processing time of an FCC license application?

[18] A: Yes. I had a vague understanding. But most
[19] of Liberty's applications had been held up for quite
[20] awhile and therefore the normal course was not
[21] necessarily 60.90. I mean they had been held up for
[22] quite a long time.

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[1] So, I don't know specifically what my
[2] client's understanding was specifically with respect to
[3] this document, what my client's understandings were as
[4] to the normal processing times.

[5] Q: Based on what I believe to be your testimony
[6] that you did have an understanding generally of those
[7] expectations, would the fact that the applications
[8] listed here having been pending - strike that. That
[9] was going to be compound.

[10] **MR. SPITZER:** They all have been. But that
[11] is okay. It's your record.

[12] **BY MR. KIRKLAND:**

[13] Q: Based on your understanding at that time of
[14] your client's expectations, would you have expected
[15] them to have been troubled by the fact that these six
[16] applications had been pending for three months?

[17] **MR. SPITZER:** I am going to object as being
[18] beyond the scope of this deposition.

[19] **MR. KIRKLAND:** Are you instructing him not
[20] answer?

[21] **MR. SPITZER:** Yes. I am.

[22] **BY MR. KIRKLAND:**

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[1] Q: This document reflects and your testimony
[2] today reflects that you were routinely monitoring the
[3] status of Liberty's applications; is that correct?

[4] A: Yes. That is correct.

[5] Q: Was there a point at which or a time frame in
[6] which during the processing of any application that you
[7] would have been concerned that the time frame did not
[8] match Liberty's business needs?

[9] **MR. SPITZER:** I am going to instruct the
[10] witness not to answer for the reason that has been
[11] often stated.

[12] **BY MR. KIRKLAND:**

[13] Q: Would there have been any point at which you
[14] would have suggested to the client that they should
[15] file for an STA because an application had been pending
[16] for too long?

[17] **MR. SPITZER:** I will give the witness the
[18] same instruction.

[19] **BY MR. KIRKLAND:**

[20] Q: Around the time of the preparation of this
[21] document, Lehmkuhl 3, did you have any discussions with
[22] anyone at Liberty about the time any FCC application

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[1] had been pending?
 [2] **A:** Yes. It's possible. I don't remember
 [3] specifically, but yes.
 [4] **Q:** Do you remember the general nature of those
 [5] discussions?
 [6] **A:** Yes.
 [7] **Q:** And what was it?
 [8] **A:** The general nature was what is the general
 [9] status of the pending applications.
 [10] I don't recall any reference to any
 [11] particular sites or licenses and I was not aware of any
 [12] service requirements.
 [13] **Q:** Did anyone from Liberty express concern about
 [14] how long any application had been pending during this
 [15] time period?
 [16] **MR. SPITZER:** I am going to again state the
 [17] same objection.
 [18] **MR. KIRKLAND:** Are you instructing him not to
 [19] answer?
 [20] **MR. SPITZER:** Yes. I am.
 [21] **MR. KIRKLAND:** Mr. **Spitzer**, that is squarely
 [22] within the scope of this deposition.

[1] **A:** I don't recall specifically.
 [2] **Q:** What is your general recollection?
 [3] **A:** My general recollection is that it's
 [4] possible. But, as I stated previously, a number of
 [5] Liberty's applications before this had been pending for
 [6] a very long time.
 [7] **Q:** Your general recollection of these
 [8] discussions was one of concern over delay?
 [9] **A:** I don't recall.
 [10] **Q:** But delay was discussed?
 [11] **A:** As **delay** is discussed in any discussions
 [12] about licensing with any client.
 [13] **Q:** And that was, to your recollection, around
 [14] the time frame of **your** preparation of this inventory?
 [15] **A:** It's possible. I don't recall specifically.
 [16] **Q:** With respect to your general recollection of
 [17] those discussions, do you remember who you had those
 [18] discussions with?
 [19] **A:** I would have probably had them with
 [20] Mr. **Nourain**.
 [21] **Q:** Did you consider Mr. **Nourain** generally to be
 [22] attentive to your activities with the FCC on Liberty's

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[1] You have shown a document that your client
 [2] received which is undisputed. I am entitled to ask
 [3] what discussions Mr. Lehmkuhl had contemporaneously
 [4] with this document since we didn't see this document
 [5] before when the other depositions were conducted.
 [6] **MR. SPITZER:** Mr. Kirkland, raising your
 [7] voice doesn't make the question more relevant, less
 [8] relevant or less or more articulate.
 [9] The problem is your question was not tied in
 [10] any way, shape or form to the inventory. If you wish
 [11] to formulate your questions in a different way, maybe
 [12] they would be within the scope of this deposition. So
 [13] far you have been failing to do that.
 [14] **MR. KIRKLAND:** I believe I am entitled to
 [15] formulate my questions the way I would like to
 [16] formulate them.
 [17] **MR. SPITZER:** Sure you are, and then we are
 [18] going to object to them as beyond the scope of the
 [19] deposition. If you wish to conform to the judge's
 [20] order, you can do so.
 [21] **MR. KIRKLAND:** Could you read the question
 [22] back?

[1] behalf?
 [2] **MR. SPITZER:** Could you read the question
 [3] back? I'm sorry.
 [4] (The reporter read the requested portion
 [5] of the record.).
 [6] **MR. SPITZER:** I think that question has been
 [7] asked and answered.
 [8] **MR. KIRKLAND:** Are you instructing him not to
 [9] answer?
 [10] **MR. SPITZER:** I will let him give the same
 [11] answer. Or a different answer, if he so chooses.
 [12] **MR. KIRKLAND:** Just so long as you don't tell
 [13] him what the answer is.
 [14] **THE WITNESS:** I don't recall.
 [15] I mean, I would generally say that, yes, he
 [16] understood. It was my impression that he understood
 [17] what was going on with the **applications**. That was one
 [18] of the purposes of this inventory.
 [19] **BY MR. KIRKLAND:**
 [20] **Q:** Earlier to & y Mr. **Beckner** questioned you
 [21] whether you had any discussions with Mr. Barr about the
 [22] inventory, and I believe that the question was focused

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[1] I know it's awhile back, thanks to
 [2] Mr. Spitzer.
 [3] (The reporter read the requested portion
 [4] of the record.)
 [5] **MR. KIRKLAND:** Is it your position,
 [6] Mr. Spitzer, that during this time period is an
 [7] insufficient link to this document?
 [8] **MR. SPITZER:** Yes, indeed it is, because you
 [9] had defined this time period at the beginning of this
 [10] deposition as the entirety of 1994 and the first half
 [11] of 1995.
 [12] Is that correct, Mr. Kirkland?
 [13] **MR. KIRKLAND:** Excellent point, Mr. **Spitzer**.
 [14] **MR. SPITZER:** So, let's see if we can ask a
 [15] proper question.
 [16] **MR. KIRKLAND:** Raising **your** voice, however,
 [17] doesn't increase the cogency of **your** objection.
 [18] **BY MR. KIRKLAND:**
 [19] **Q:** At or around the time you prepared this
 [20] inventory, did anyone from Liberty express concern to
 [21] you about how long any FCC application had been
 [22] pending?

[1] on whether or not it was a policy to prepare the
 [2] inventory.
 [3] I would just like to ask the broader question
 [4] of whether you had any other discussions with Howard
 [5] Barr in connection before or after with the preparation
 [6] of this inventory?
 [7] **MR. SPITZER:** Could you clarify the time
 [8] frame of these conversations?
 [9] **MR. KIRKLAND:** The time frame would be at or
 [10] around the time the inventory was prepared.
 [11] **THE WITNESS:** It's possible, like I stated
 [12] before, that I had conversations with Mr. **Barr**. They
 [13] were primarily strictly limited to the form, the form
 [14] of the inventory, or the fact that I was preparing it.
 [15] **BY MR. KIRKLAND:**
 [16] **Q:** To your knowledge did anyone at **Pepper &**
 [17] **Corazzini**, other than you, have discussions with anyone
 [18] at Liberty about this inventory?
 [19] **MR. SPITZER:** I don't believe there has been
 [20] any testimony that there were conversations with people
 [21] at Liberty about this inventory.
 [22] **MR. KIRKLAND:** Well, that is whv the Question

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[1] was phrased the way it was.

[2] Could you read it back please?

[3] (The reporter read the requested portion
[4] of the record.)

[5] **THE WITNESS:** I don't know. Like I stated
[6] earlier, I don't recall even having a discussion about
[7] this particular inventory with anyone.

[8] **BY MR. KIRKLAND:**

[9] Q: That is anyone -

[10] A: Well, with anyone at Liberty.

[11] Q: My question was if you have any knowledge,
[12] direct or indirect, of any discussions between anyone
[13] else at Pepper & Corazzini and anyone at Liberty at or
[14] around the time this inventory was prepared?

[15] A: I don't recall.

[16] Q: Do you recall having any discussions with
[17] anyone, other than Howard Barr at Pepper & Corazzini,
[18] about this inventory at or around the time it was
[19] prepared?

[20] A: I don't recall. Probably not.

[21] Q: Did you not testify earlier that you had a
[22] paralegal assist you in the preparation of this

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[1] inventory?

[2] A: Yes.

[3] Q: Does she not count as anyone?

[4] A: I didn't discuss the inventory with her. I
[5] asked her to compile the records. I was the one
[6] putting the inventory together, so I wouldn't have had
[7] occasion to talk to the paralegal about preparation of
[8] the inventory.

[9] Q: I am hoping you are not limiting your answer
[10] to a substantive discussion. I want to know if you had
[11] any discussion, any contact, with anyone else at Pepper
[12] & Corazzini with respect to this inventory at or around
[13] the time it was prepared?

[14] **MR. SPITZER:** If you are going to be that
[15] precise, I am going to object in terms of what you mean
[16] with respect to. Does that mean with respect to the
[17] secretary sending it? Does it mean substantive
[18] discussion?

[19] Your question is unclear.

[20] **BY MR. KIRKLAND:**

[21] Q: Do you understand what with respect to means,
[22] Mr. Lehmkuhl?

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[1] A: Well, it's quite vague. I don't know. Could
[2] you be a little bit more specific?

[3] Q: At or around the time the inventory was
[4] prepared, do you recall having any contacts of any
[5] nature whatsoever that related in any way to this
[6] inventory with anyone at Pepper & Corazzini other than
[7] Howard Barr?

[8] A: It's possible. I don't recall anything
[9] specific.

[10] Q: What is your general recollection?

[11] A: Again, it was based on collateral information
[12] gathering or preparation of the form of the inventory.

[13] Q: So you had no other discussions with any
[14] partners about the inventory?

[15] A: No.

[16] Q: Were you the primary contact point at Pepper
[17] & Corazzini for Liberty in terms of day-to-day
[18] interactions?

[19] **MR. SPITZER:** I am going to object. That is
[20] asked and answered. It also is beyond the scope of
[21] this deposition.

[22] **MR. KIRKLAND:** Are you instructing him not to

[1] answer?

[2] **MR. SPITZER:** Yes. I am.

[3] **MR. KIRKLAND:** I have no further questions.

[4] **MR. BEGLEITER:** Excuse me for a second.

[5] (Discussion off the record between the
[6] witness, Mr. Begleiter and Mr. Spitzer.)

[7] **THE WITNESS:** I would like to clarify for the
[8] record that Mr. Spitzer and Mr. Begleiter are here
[9] representing me in the capacity that I am involved with
[10] Liberty and that Liberty is my client.

[11] **MR. KIRKLAND:** I would like to ask a
[12] follow-up on that.

[13] **BY MR. KIRKLAND:**

[14] Q: I believe I asked you a question earlier
[15] whether you believe that you had individual interests
[16] in this proceeding separate and apart from your
[17] capacity as agent for Liberty and you were instructed
[18] not to answer by your client. You have now testified,
[19] at your client's suggestion, that you are, in fact,
[20] using Mr. Spitzer and Mr. Begleiter in your capacity as
[21] agent.

[22] So, I would like an answer to my earlier

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[1] question of whether you believe you have individual
[2] interests at stake in this proceeding.

[3] **MR. SPITZER:** I think you have some of the
[4] words backwards. I think you referred to us as client
[5] and us as agent. But that is okay. You might want to
[6] try to restate the question.

[7] **BY MR. KIRKLAND:**

[8] Q: Do you have any personal interest at stake in
[9] this proceeding?

[10] A: Yes. I do.

[11] Q: Have you considered whether those personal
[12] interests are adverse to those of Liberty, Mr. Spitzer
[13] and Mr. Begleiter's client?

[14] A: Yes. I have.

[15] Q: Have you discussed that with Mr. Spitzer and
[16] Mr. Begleiter?

[17] A: Not specifically. No.

[18] Q: You have no personal counsel representing
[19] your personal interests in this proceeding?

[20] A: No. I do not.

[21] Q: Every question in which you have followed
[22] Mr. Spitzer's instruction not to answer, is it your

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[1] position that you were following those instructions as
[2] an agent?

[3] A: I am following those instructions to further
[4] my client's interest and I am relying on the fact that
[5] Mr. Spitzer and Mr. Begleiter are able attorneys to
[6] keep my personal interests in mind and I will keep my
[7] personal interest in mind as well.

[8] Q: When you followed the instructions not to
[9] answer questions, did you make a determination whether
[10] Mr. Spitzer's advice was consistent with your own
[11] personal interests?

[12] A: Yes. I did.

[13] Q: In every case?

[14] A: Yes. I did.

[15] **MR. KIRKLAND:** No more questions.

[16] **MR. BEGLEITER:** Thank you for clarifying
[17] that, Mr. Kirkland.

[18] (Whereupon, at 11:35 a.m., the taking
[19] of the deposition was concluded.)

[20] (Signature not waived.)